

## **REMARKS**

### **Telephonic Interview**

Applicants would like to sincerely thank the Examiner for taking the time to discuss this application over the phone with Applicants' representative, Wanli Wu on December 9, 2011 and with Applicants' representatives Dale Carlson and Wanli Wu on December 13, 2011 and December 15, 2011.

During the telephonic interviews, possible claim amendments were discussed. Also discussed was a provisional obviousness type double patenting rejection. Applicants' representatives agreed to further amend the claims for the Examiner's consideration as provided herein.

### **Claim Amendments**

Supplemental to the Amendment and accompanying Remarks filed on October 13, 2011, Applicants further amended the claims for the Examiner's consideration. By this Amendment, claims 54-56, 58 and 59 have been amended. Claims 51-53 and 61-63 have been cancelled. No new claims are added. After the amendment, claims 54-60 are presented for further examination. Applicants respectfully submit that no new matter has been added. By virtue of the instant claim amendments, the claims are believed to be in condition for allowance. Accordingly, an early receipt of allowance thereof is respectfully requested.

### **Double Patenting**

Claims were rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over e.g. claim 3 of U.S. Pat. No. 7,026,308 to Gavin et al.

Claim 3 of Gavin et al. depends from claim 1, which is directed to a topical composition for treating microbes comprising: a) an anti-microbial active selected from the group consisting of polyvalent metal salts of pyrrithione; b) a metal ion source selected from the group consisting of zinc salts, copper salts, silver salts, nickel salts, cadmium salts, mercury salts, bismuth salts,

and mixtures thereof; and c) a topical carrier for the anti-microbial active and the metal salt, wherein the composition further comprises at least a 5 to 1 ratio of polyvalent metal salt of pyrrhione to a strong chelating agent wherein the strong chelating agent is selected from di- or polyamines, diethylene triamine penta-acetic acid, tetraethylene triamine, ethylene diamine, diethylene triamine or salts thereof or mixtures thereof.

The strong chelating agent required by the claims of Gavin et al. is structurally different from and not suggestive of the fatty acid recited in the instant claims. Accordingly, it is believed that the disclosure of a composition containing a strong chelating agent as recited in the claims of Gavin et al. does not disclose or suggest any composition containing any fatty acid, much less the composition as recited in the instant claims wherein the fatty acid is selected from a specific Markush group.

Reconsideration of the claims in their amended form and an early receipt of a Notice of Allowance thereof are respectfully requested.

Any fees due with this Reply may be charged to our Deposit Account No. 23-1665 under Customer Number 27267.

Respectfully submitted,

David F. Gavin, et al.

Date: December 15, 2011

/Wanli Wu/

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